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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/423,776 01/07/00 DUNLOP

C GRIHAC -P26A

EXAMINER

OM12/1222

DAVIS AND BUJOLD
500 NORTH COMMERCIAL STREET
FOURTH FLOOR
MANCHESTER NH 03101

CARTER, R

ART UNIT

PAPER NUMBER

3736

DATE MAILED:

12/22/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/423,776

Applicant(s)

Dunlop

Examiner

Ryan Carter

Group Art Unit

3736

☒ Responsive to communication(s) filed on Nov 10, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 34-65 is/are pending in the application

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 34-65 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☒ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 6

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 11/10/1999 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claim 45, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 34-65 are rejected under 35 U.S.C. 102(b) as being anticipated by Nappholz et al.

Nappholz et al. disclose a method and apparatus for monitoring hemodynamic function. The patent uses Doppler ultrasound techniques to derive an automatic closed-loop control parameter based of cardiac output to regulate hemodynamic therapy.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 34-35, 44-46, and 63-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marks. Marks discloses a plethysmograph, and the importance of measuring peripheral blood flow. Marks states that the peripheral blood flow is altered as the cardiac output increases or decreases. Marks goes on to state that cardiac output is critically important to monitor with respect to ill or unstable patients (see col.1, lns. 15-27). Thus, it would have been obvious to one skilled in the art to arrive at the method of the present claims, since Marks discloses the relationship between peripheral blood flow and cardiac output, as well as the vitality of measuring cardiac output to monitor one's hemodynamic function. Also, it would have been

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obvious to use Doppler or pulse oximeter devices in the measurement, as these devices are well-known for use in measuring a patient's blood flow.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Carter whose telephone number is (703) 308-2990.


CARY D. CONNOR
SUPERVISORY PATENT EXAMINER
GROUP 3700

rcc

December 17, 2000